

MAR 22 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALSJUDICIAL COUNCIL
OF THE NINTH CIRCUITIN RE COMPLAINT OF
JUDICIAL MISCONDUCT

No. 09-90279

ORDER

KOZINSKI, Chief Judge:

Complainant, a pro se litigant, alleges that the district judge assigned to his case should have recused himself. This allegation is merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009); Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). The proper means to pursue a claim that a judge ought to recuse is through a motion for disqualification in the underlying suit.

An allegation that a judge presided in a case knowing that he is subject to a material conflict of interest or intending to favor or disfavor a party on grounds unrelated to the merits may present a viable claim of judicial misconduct. See id. But to state such a claim, a complainant would have to provide convincing proof that the judge was aware of a material conflict or was acting with a corrupt motive.

The evidence complainant presents—that the wife of one of complainant’s business associates was involved in litigation unrelated to complainant’s case against a government agency, the head of which was the judge’s friend—comes nowhere close. Nor are adverse rulings proof of bias, much less sufficient to raise an inference of misconduct. See In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009). This allegation must therefore be dismissed for lack of objectively verifiable proof. 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant’s allegations that the judge engaged in criminal behavior by conspiring with organized crime and altering records in the Library of Congress are likewise dismissed for lack of objectively verifiable proof. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D); In re Complaint of Judicial Misconduct, 569 F.3d 1093, 1093 (9th Cir. Jud. Council 2009). Although complainant asserts that he has “evidence” of such misconduct, he does not specify what that evidence is or how it would substantiate his allegations.

Complainant’s attempts to re-litigate various substantive and procedural rulings in his case are dismissed as merits-related. 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). “The judicial misconduct system is emphatically not a forum for disappointed litigants to continue litigation already

decided on the merits.” In re Complaint of Judicial Misconduct, 579 F.3d at 1064.

Complainant’s allegations against court staff are dismissed because the misconduct complaint procedure only applies to federal judges. See Judicial-Conduct Rule 4.

Complainant would have me recuse myself from ruling on the complaint because I know the subject judge and because we share the same profession and religion. This request is denied, as the misconduct complaint procedure designed by Congress specifically contemplates that judges will decide complaints concerning the behavior of other judges who are known to them. See 28 U.S.C. § 351. Nor is a shared religion grounds for disqualification.

Complainant’s business associate recently filed two misconduct complaints against the same judge attempting to re-litigate that complainant’s five motions to disqualify and two motions to reconsider the denial of those motions to disqualify. See In re Complaint of Judicial Misconduct, Nos. 09-90209+ (9th Cir. Jud. Council 2009); In re Complaint of Judicial Misconduct, 579 F.3d at 1063–64.

Complainant’s allegations relate to the same facts, raise the same allegations and continue the same pattern of abuse of the judicial misconduct procedure.

Complainant is therefore cautioned that additional complaints raising substantially the same allegations may result in sanctions, including an order restricting

complainant from filing further complaints. See Judicial-Conduct Rule 10(a); In re Complaint of Judicial Misconduct, 552 F.3d 1146, 1148 (9th Cir. Jud. Council 2009).

DISMISSED.